

REMARKS

Claims 1-53 are pending. Claims 21-36, 38-41, and 43-53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers et al. (U.S. Patent Application Publication 2003/0236581) in view of Suzuki et al. (U.S. Patent 6,245,982). Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Suzuki, and further in view of Kryuchkov et al. (U.S. Patent Application Publication 2004/0102244). Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chambers in view of Suzuki, and further in view of Nishitani et al. (U.S. Patent 7,161,079).

As an initial matter, Applicant would like to thank the Examiner for the courtesy extended to Applicant's representative, David Weiss, during the telephonic interview.

Rejections under 35 U.S.C. § 103(a)

Claim 21

The combination of Chambers and Suzuki fails to teach or suggest multiple features of claim 21, as well as the combination of features recited in claim 21.

As discussed in the interview, neither Chambers nor Suzuki, singly or in combination, disclose or suggest a method including at least the features of providing for display on a user editing system a cue insertion interface that enables a user to insert cue at one or more locations with respect to the audio waveform, wherein the cue is configured to cause a modification with respect to the abstract visual presentation in synchronization with the audio presentation when the audio presentation is audibly played back, with the abstract visual presentation, via a playback device associated with a viewer of the abstract visual presentation, wherein the viewer playback device is separate from the editing system. Therefore, for at least the foregoing reasons, amended claim 21 is patentably distinct over the combination of Chambers and Suzuki.

Further, as noted in Applicant's previous response of April 1, 2010, the motion waveform of Suzuki referred to by the Office Action is the motion trajectory in the X, Y and Z-axis directions of the musical instrument and the player, and is used to render the player and instrument in image display window 40 of FIG. 6, where the trajectory of motion of a player and a musical instrument in a performance is captured as motion capture data (see, e.g., Suzuki, col. 8, lines 26-41, col. 11, lines 32-39, FIG. 6).

No mention is made in Suzuki of presenting an abstract visual presentation synchronized with an audio presentation during audible playback of the audio presentation.

Significantly, Suzuki only references sound reproduction with respect to Figure 12. In particular, Suzuki recites:

In step S46, an operation similar to a conventional automatic performance operation is performed so as to create tone-generation events such as key-on events and control changes, and sound source control parameters, based on performance information contained in the reproduction data (sequence file) read in step S41. In step S46, the sound source control parameters thus created are transmitted to the sound source unit 5, which in turn generates corresponding musical tones (step S47), and the sound system 6 then emits the musical tones. (Suzuki, Col. 17, lines 5-14)

Thus, while emitting musical tones are disclosed at step S46, no mention is made of presenting the motion waveform in step S46, much less that the motion waveform is presented in synchronization with the audible playing of the musical tones of Suzuki.

In addition, as noted above, Chambers is directed to a method for recording live performances. Suzuki, by contrast, is directed to a performance image information creating apparatus and method and a corresponding performance image information reproducing apparatus and method, capable of displaying a manner of playing a piece of music while playing the piece of music. With respect to the triangles in area 63 of FIG. 6 (which the Office Action refers to as "arrows"), and the rectangles in area 63 of FIG. 6 (which the Office Action refers to as "bars"), Suzuki discloses:

reference numeral 63 denotes the time schedule of a parts that is a drummer in this case, and 64 and 65 denote the motion waveform of each parts relating to the musical instrument. Each motion waveform is displayed in the form of a rectangle, and, if it contains sounding point markers, the position of each marker is denoted by a triangle that points to the right. In the example of FIG. 6, the parts 63 includes a stick, for example, and the positions of the sounding point markers are displayed. ...

The playback rate of a motion waveform of each parts can be changed by selecting a rectangle representing the motion waveform of the parts, and changing the length of the rectangle. For example, the playback rate may be reduced by increasing the length. The playback rate may also be automatically changed when the tempo of the piece of music in question is changed.

Thus, the arrows referred to by the Office Action are sounding point markers, while the bars referred to by the Office Action are used to control the playback tempo. Because the rectangular display area 104 of FIG. 3 of Chambers is a scrolling graphical display that factually shows the combined amplitude of the live audio signals available for recording, one could not use the sounding point markers or tempo control user interfaces of Suzuki to modify the display area 104 of FIG. 3 of Chambers, as one could not control the tempo or sounding points of the live recording of Chambers via the display area 104 (which merely displays the amplitude of live audio signals). Thus, Chambers and Suzuki cannot be combined as proposed by the Office Action.

Indeed, Chambers teaches away from the modification proposed by the Office Action. As discussed above, because Chambers teaches that the display area 104 of FIG 3 is used to display the amplitude of live audio signals, Chambers teaches away from modifying the display area 104 so that it displays tempos and sounding points that are different than those of the live audio signals.

In addition to the lack of teaching of each of the above-recited features of claim 21, the combination of Chambers and Suzuki also fails to teach or suggest the combination of features recited in claim 21. Accordingly, Applicant respectfully requests reconsideration and allowance of claim 21 and any claims that depend therefrom.

Claim 23

Dependent claim 23 is believed to be in condition for allowance over the cited art at least for the same reasons as its base claims, as well as its unique patentable features.

Further, the combination of Chambers and Suzuki fails to disclose the features of "wherein the first signal indicates the beginning of a guitar riff." The Office Action admits that Chambers fails to disclose the foregoing features. Nonetheless, the Office Action alleges that:

Suzuki et al. discloses in Fig. 9 capturing the waveform of the guitarist (col. 14, lines 25-36). Suzuki et al. also discloses a cue insertion interface that enables a user to insert cue at one or more locations with respect to the audio waveform (Fig. 6 — two types of cues can be seen being used to designate information, the arrows and the bars; col. 12, line 30— col. 13, line 3—the operator can edit the cues; col. 13, line 28- col. 15, line 38- motion and scene components (cues)

can be edited according to the user's liking). Therefore, the user would be able to insert a cue to mark the guitar if one desired.

However, while FIG. 9 shows a guitarist with a guitar, Suzuki fails to even mention receiving a signal from a user input device indicating the beginning of a guitar riff.

In response to the forgoing discussion, presented in Applicant's previous response, the Office Action alleges that:

Suzuki et al. discloses in Fig. 9 the motion waveform for the guitar (col. 14, lines 25-36). Furthermore, Suzuki discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the audio they would like to be cued, whether it be a guitar riff, a person singing, or parts indicated by the motion waveforms. Therefore, by allowing the user to insert cues according to the user's liking Suzuki et al. meets the claimed limitations and the rejection is maintained.

Thus, the Examiner appears to argue that the system of Suzuki is capable of receiving a signal that indicates the beginning of a guitar riff to designate a cue at a location with respect to an audio waveform, and so discloses the claimed feature. However, claim 23 is a method claim. Thus, even assuming that Suzuki were capable of receiving such a signal that indicates the beginning of a guitar riff (which assumption Applicant specifically denies), Suzuki completely fails to teach using the disclosed system to receive a signal that indicates the beginning of a guitar riff as claimed.

For the foregoing reasons as well, Applicant respectfully traverses the rejection of claim 23.

Claim 24

Dependent claim 24 is believed to be in condition for allowance over the cited art at least for the same reasons as its base claims, as well as its unique patentable features.

Further, the combination of Chambers and Suzuki fails to disclose the features of "automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance," as recited by claim 24. The Office Action admits that Chambers fails to disclose the foregoing features. Nonetheless, the Office Action alleges that Suzuki, at

Fig. 9 — section 81, col. 2, lines 35-43, and col. 14, lines 37-53 discloses the foregoing feature.

The Office Action has inadvertently mischaracterized Suzuki. Suzuki discloses a scene component database that contains light source information and a scene file that contains light source information. However, Suzuki fails to even mention a lighting system, much less an automated lighting system used to light a live performance. Therefore, Suzuki does not, and cannot disclose “automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance,” as recited by claim 24.

In response to the forgoing discussion, presented in Applicant’s previous response, the Office Action alleges that:

Suzuki et al. discloses in Fig. 9, section 81 a light area that can be seen to have cues in the row marked lighting. Furthermore, Suzuki et al. discloses in col. 2, lines 35-43 and col. 14, lines 37-53 acquiring lighting information along with all of the background information going on during the performance. Suzuki et al. also discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued. Therefore, Suzuki et al. meets the claimed limitations and the rejection is maintained.

However, as previously noted, FIG. 9, section 81, merely recites the phrase “light”. Col. 2, lines 35-43 and col. 14, lines 37-53 merely disclose receiving light source information and do not mention a signal received from an automated lighting system.

Further, while the Office Action alleges that Suzuki discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued, Suzuki does not disclose automatically inserting a cue based at least in part on a signal received from an automated lighting system. Therefore, Suzuki fails to disclose “automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance,” as claimed.

Still further, the Examiner appears to argue that the system of Suzuki is capable of receiving automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live

performance, and so discloses the claimed feature. However, claim 24 is a method claim. Thus, even assuming that Suzuki were capable of automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance (which assumption Applicant specifically denies), Suzuki completely fails to disclose using the disclosed system to perform the claim method.

For the foregoing reasons as well, Applicant respectfully traverses the rejection of claim 24.

Claim 25

Dependent claim 25 is believed to be in condition for allowance over the cited art at least for the same reasons as its base claims, as well as its unique patentable features.

Further, the combination of Chambers and Suzuki fails to disclose the features of "wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal," as recited by claim 25. The Office Action admits that Chambers fails to disclose the foregoing features. Nonetheless, the Office Action alleges that Suzuki, at Fig. 9 — section 81, col. 2, lines 35-43, and col. 14, lines 37-53 discloses the foregoing feature.

Suzuki discloses a scene component database that contains light source information and a scene file that contains light source information. However, Suzuki fails to even mention a spotlight-on signal, a spotlight color signal, or a spotlight position signal. While the Office Action alleges that section 81 of FIG. 9 discloses when the spotlight on, FIG. 9 does not even mention a spotlight-on signal. Instead, FIG. 9, section 81, merely recites the phrase "light". Therefore, Suzuki does not, and cannot disclose "wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal," as recited by claim 25.

In response to the forgoing discussion, presented in Applicant's previous response, the Office Action alleges that:

Suzuki et al. discloses in Fig. 9, section 81 a light area that can be seen to have cues in the row marked lighting. Furthermore, Suzuki et al. discloses in col. 2, lines 35-43 and col. 14, lines 37-53 acquiring lighting information along with all of the background information going on during the performance. Suzuki et al. also

discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued. Therefore, Suzuki et al. meets the claimed limitations and the rejection is maintained.

However, FIG. 9, section 81, merely recites the phrase "light". Further, while the Office Action alleges that Suzuki discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued, Suzuki does not disclose automatically inserting a cue based at least in part on a signal received from an automated lighting system. Therefore, Suzuki further fails to disclose "wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal," as claimed.

Still further, the Examiner appears to argue that the system of Suzuki is capable of receiving automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance, wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal, and so discloses the claimed feature. However, claim 25 is a method claim. Thus, even assuming that Suzuki were capable of automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance, wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal (which assumption Applicant specifically denies), Suzuki completely fails to disclose using the disclosed system to perform the claim method.

In response to the forgoing discussion, presented in Applicant's previous response, the Office Action alleges that:

Suzuki et al. discloses in Fig. 9, section 81 a light area that can be seen to have cues in the row marked lighting. Furthermore, Suzuki et al. discloses in col. 2, lines 35-43 and col. 14, lines 37-53 acquiring lighting information along with all of the background information going on during the performance. Suzuki et al. also discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued. Therefore, Suzuki et al. meets the claimed limitations and the rejection is maintained.

However, the Office Action alleges that section 81 of FIG. 9 discloses when the spotlight on, FIG. 9 does not even mention an automated lighting system. Instead, FIG. 9, section 81, merely recites the phrase "light". Col. 2, lines 35-43 and col. 14, lines 37-53 merely disclose receiving light source information and do not mention a signal received from an automated lighting system.

Further, while the Office Action alleges that Suzuki discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued, Suzuki does not disclose automatically inserting a cue based at least in part on a signal received from an automated lighting system. Therefore, Suzuki fails to disclose "wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal," as claimed.

Still further, the Examiner appears to argue that the system of Suzuki is capable of receiving automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance, and so discloses the claimed feature. However, claim 25 is a method claim. Thus, even assuming that Suzuki were capable of automatically inserting at least one cue with respect to the audio based at least in part on a signal received from an automated lighting system used to light a live performance, wherein the signal from the automated lighting system is a spotlight-on signal, a spotlight color signal, or a spotlight position signal (which assumption Applicant specifically denies), Suzuki completely fails to disclose using the disclosed system to perform the claim method.

For the foregoing reasons as well, Applicant respectfully traverses the rejection of claim 25.

Claim 26

Dependent claim 26 is believed to be in condition for allowance over the cited art at least for the same reasons as its base claims, as well as its unique patentable features.

Further, the combination of Chambers and Suzuki fails to disclose the features of "inserting at least one cue with respect to the audio based at least in part on monitoring of stage lighting effects," as recited by claim 26. The Office Action admits that

Chambers fails to disclose the foregoing features. Nonetheless, the Office Action alleges that Suzuki, at Fig. 9 — section 81, col. 2, lines 35-43, and col. 14, lines 37-53 discloses the foregoing feature.

Applicant notes that the Office Action has failed to provide a rational to modify Chambers with Suzuki's alleged ability to insert a cue with respect to the audio based at least in part on monitoring of stage lighting effects, and therefore has failed to make a *prima facie* case of obviousness with respect to claim 26.

Further, the Office Action has inadvertently mischaracterized Suzuki. Suzuki discloses a scene component database that contains light source information and a scene file that contains light source information. However, Suzuki fails to even mention the monitoring of stage lighting effects. While the Office Action alleges that section 81 of FIG. 9 discloses when the spotlight on, FIG. 9 does not even mention monitoring of stage lighting effects. Instead, FIG. 9, section 81, merely recites the phrase "light". Therefore, Suzuki does not, and cannot disclose "monitoring of stage lighting effects," as recited by claim 26.

In response to the forgoing discussion, presented in Applicant's previous response, the Office Action alleges that:

Suzuki et al. discloses in Fig. 9, section 81 a light area that can be seen to have cues in the row marked lighting. Furthermore, Suzuki et al. discloses in col. 2, lines 35-43 and col. 14, lines 37-53 acquiring lighting information along with all of the background information going on during the performance. Suzuki et al. also discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued. Therefore, Suzuki et al. meets the claimed limitations and the rejection is maintained.

However, FIG. 9, section 81, merely recites the phrase "light". Col. 2, lines 35-43 and col. 14, lines 37-53 merely disclose receiving light source information and do not mention inserting at least one cue with respect to the audio based at least in part on monitoring of stage lighting effects.

Further, while the Office Action alleges that Suzuki discloses in col. 12, line 30 - col. 15, line 38 a cue insertion interface allowing the user to designate points in the presentation they would like to be cued, Suzuki does not disclose inserting a cue based at least in part on monitoring of stage lighting effects.

Still further, the Examiner appears to argue that the system of Suzuki is capable of inserting at least one cue with respect to the audio based at least in part on monitoring of stage lighting effects, and so discloses the claimed feature. However, claim 26 is a method claim. Thus, even assuming that Suzuki were capable of inserting at least one cue with respect to the audio based at least in part on monitoring of stage lighting effects (which assumption Applicant specifically denies), Suzuki completely fails to disclose using the disclosed system to perform the claim method.

For the foregoing reasons as well, Applicant respectfully traverses the rejection of claim 26.

Claims 29, 30 and 31

The Office Action admits that Chambers and Suzuki fail to disclose:

analyzing a song by inserting at least one cue with respect to the audio based at least in part on a filter analysis on the power of a plurality of audio frequency bands, wherein the filter analysis cue includes a value to indicate an audio frequency band's strength over an interval of time, or wherein the filter analysis cue includes an indication that a signal of a selected frequency component of having a strength above a predetermined threshold value is present in the audio waveform.

None the less, the Office Action takes Official Notice that:

it is well known in the art to have performed song analysis using a filter to determine the frequency components of a song.

The Office Action improperly attempts to take Official Notice of matter that is not "capable of instant and unquestionable demonstration", as expressly required by section 2144.03(A) of the MPEP. Further, "[a]ssertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art." MPEP 2144.03(A). Thus, the Office Action's apparent attempt to officially notice that the features of claims 29, 30, and 31 are "well known in the art" is improper as a matter of law.

Proper use of Official Notice requires compliance with several obligations expressly set forth in the Manual of Patent Examining Procedure. The Office Action has failed to meet these obligations. Specifically, the Office has failed to satisfy its

obligations under MPEP § 2144.03. MPEP § 2144.03 (B), for example, expressly requires the Office to provide specific factual findings predicated on sound technical and scientific reasoning to support taking Official Notice. The MPEP goes on to explain that this means that the Office should present an Applicant with the explicit basis on which Official Notice is based so that the Applicant is able to challenge the assertion in the next reply after the Office action. (MPEP §2144.03(B)). Naked assertions about what is allegedly known in the art, like those noted, cannot satisfy these requirements.

In sum, the Office Action's apparent assertion of Official Notice is improper and traversed. For this reason as well, Applicant respectfully traverses the rejection of claims 29, 30, and 31.

For the foregoing reasons as well, Applicant respectfully traverses the rejection of claim 29, 30, and 31.

Claim 32

Dependent Claim 32 is believed to be in condition for allowance over the cited art at least for the same reasons as its base claims, as well as its unique patentable features.

Further, the combination of Chambers and Suzuki fails to disclose the features of "using mixing board automation to generate at least one cue." The Office Action alleges that:

Chambers et al. in view of Suzuki et al. discloses all the limitations as previously discussed with respect to claim 21 including that the method further comprising using mixing board automation to generate at least one cue (Chambers et al.: paragraph [00051]).

The Office Action has inadvertently mischaracterized Chambers. Chambers fails to even disclose generating a cue, and therefore fails to disclose "using mixing board automation to generate at least one cue." For the foregoing reasons as well, Applicant respectfully traverses the rejection of Claim 32.

Claim 33

Dependent Claim 33 is believed to be in condition for allowance over the cited art at least for the same reasons as its base claims, as well as its unique patentable features.

Further, the combination of Chambers and Suzuki fails to disclose the features of "using a track pan value to generate a cue." The Office Action alleges that:

Chambers et al. in view of Suzuki et al. discloses all the limitations as previously discussed with respect to claim 21 including that the method further comprising using a track pan value to generate a cue (Chambers et al.: the track pan value can be determined from looking at the distribution of the left and right channels as seen in Figs. 3-5).

The Office Action has inadvertently mischaracterized Chambers. Chambers fails to even disclose generating a cue or a track pan value, and therefore fails to disclose "using a track pan value to generate a cue." For the foregoing reasons as well, Applicant respectfully traverses the rejection of Claim 33.

Claims 44-48

In rejecting Claims 44-48, the Office Action relies on the rational for rejecting Claims 21, 22, 24, 40, and 41. Therefore, Applicant traverses the rejection of Claims 44-48 as similarly described above.

For example, the combination of Chambers and Suzuki fails to disclose or suggest the following features of Claim 44:

*A tangible, non-transitory computer-readable medium having computer-executable instructions stored thereon that, if executed by a computing device, cause the computing device to perform operations comprising:
providing for display on a user editing system an interactive user interface, the interactive user interface including:*

an audio waveform corresponding to digital samples of audio over time;

*time information displayed in association with the audio waveform;
a cue insertion interface that enables a user to insert a cue at one or more locations with respect to the audio waveform,*

wherein the cue is configured to cause a modification with respect to the abstract visual presentation in synchronization with the audio presentation when the audio presentation is audibly played back, with the abstract visual presentation, via a playback device associated with a viewer of the abstract visual presentation, wherein the viewer playback device is separate from the editing system;

*receiving a first signal from a user input device to designate a cue at a first location with respect to the audio waveform; and
storing the designated cue in computer readable memory.*

Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 44 and any claims that depend therefrom.

Claims 49-53

In rejecting Claims 49-53, the Office Action relies on the rational for rejecting Claims 21, 22, 24, 40, and 41. Therefore, Applicant traverses the rejection of Claims 49-53 as similarly described above. For example, the combination of Chambers and Suzuki fails to disclose or suggest the following features of Claim 49:

*An apparatus for providing an audio presentation, the apparatus comprising:
a processor;*

tangible computer-readable medium having processor-executable instructions stored thereon that, if executed by processor, cause the processor to perform operations comprising:

providing for display on a user editing system an interactive user interface, the interactive user interface including:

*an audio waveform corresponding to digital samples of audio over time;
time information displayed in association with the audio waveform;*

a cue insertion interface that enables a user to insert a cue at one or more locations with respect to the audio waveform,

wherein the cue is configured to cause a modification with respect to the abstract visual presentation in synchronization with the audio presentation when the audio presentation is audibly played back, with the abstract visual presentation, via a playback device associated with a viewer of the abstract visual presentation, wherein the viewer playback device is separate from the editing system;

receiving a first signal from a user input device to designate a cue at a first location with respect to the audio waveform; and

storing the designated cue in computer readable memory.

Accordingly, Applicant respectfully requests reconsideration and allowance of Claim 49 and any claims that depend therefrom.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any

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subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests allowance of Claims 1-53.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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